

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-33

CCMA, LLC,
COMPLAINANT,

v.

MEDITERRANEAN SHIPPING COMPANY S.A. and
MEDITERRANEAN SHIPPING COMPANY (USA) INC.,
as agent for Mediterranean Shipping Company S.A.

RESPONDENTS.

COMPLAINT

Complainant CCMA, LLC (“Complainant” or “CCMA”), by its undersigned attorneys, files this Complaint against Respondents herein, alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

I. COMPLAINANT

1. Complainant CCMA is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 450 Corporate Parkway Suite 100 Amherst, NY 14226.

II. RESPONDENTS

2. Mediterranean Shipping Company S.A. (“MSC”) is a global container shipping company founded in 1970 and headquartered at Chemin Rieu 12-14, CH-1208 Geneva, Switzerland. It is an ocean common carrier conducting business in the United States through



Mediterranean Shipping Company (USA) Inc. Mediterranean Shipping Company (USA) Inc.'s office is located at 420 5th Avenue, 8th Floor, New York, NY 10018. MSC, by itself and through its common carrier subsidiaries and affiliated companies, provides container ocean transportation of cargo to and from the United States. MSC is and was at all times pertinent to this Complaint an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. § 40102(7), subject to regulation by the Federal Maritime Commission ("FMC").

III. JURISDICTION

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended.

4. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. CCMA is seeking reparations for injuries caused to it by Respondents due to their violations of 46 U.S.C. § 41102(c).

5. The FMC has personal jurisdiction over MSC as a "common carrier" as defined in 46 U.S.C. § 40102(7).

6. Respondents' actions alleged herein constitute failures by Respondents to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of CCMA, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§545.4 and 545.5.

IV. FACTUAL ALLEGATIONS

7. In or about October 2021, CCMA purchased high carbon ferrochrome which was loaded into ten (10) 20-foot dry van containers (hereinafter, the "Containers").

8. In or about October 2021, MSC transported the Containers from Durres, Albania to Seattle, Washington under MSC bill of lading MEDUYB000352 (hereinafter, the "Shipment"). CCMA was listed as the consignee on MSC bill of lading.

A. Customs Hold and Examination

9. On November 1, 2021, CCMA was notified by Mohawk Global (“Mohawk”), the customs broker, that the Shipment was under U.S. Customs and Border Protection (“CBP”) review. On November 4, 2021, Mohawk notified CCMA that the bill of lading was on an agriculture hold and that CBP would require the Containers to be moved to a customs examination station (“CES”).

10. On November 5, 2021, the CES, operated by Mercer Distribution & Transport (“Mercer”), advised Mohawk that it could not move the Containers to the CES until sometime after expiration of the last free day (November 11, 2021) allowed for pick-up of the Containers.

11. On November 9, 2021, CCMA was advised by CBP that only one designated Container needed to be moved to the CES to be examined. However, Mercer refused to move the designated Container, citing its weight, and CBP refused to release the remaining containers until the exam for the flagged Container had been completed.

12. In order to minimize any delays with respect to the exam, CCMA arranged for the motor carrier Chandi Transport, LLC (“Chandi”) to move the container to the CES. On November 11, Chandi confirmed its availability to pick up the container. However, Chandi was unable to obtain an appointment to drop off the container at the CES until November 19, 2021.

13. On November 19, 2021, Chandi delivered the container to the CES. Thereafter, Mohawk contacted the CES on a daily basis requesting an estimate for when the examination of the flagged Container would be completed.

14. On December 4, 2021, Mercer advised that the flagged Container would be examined on December 10, 2021. Mohawk requested that the remaining Containers be released from the port but the request was denied.

15. On December 14, 2021, nearly a full month after the flagged Container's delivery to the CES, the Customs exam was completed and the hold on the flagged Container was released.

16. On December 15, 2021, the hold on the remaining Containers at the port was released.

17. On December 16, the flagged Container was picked up at the CES. On December 17, 20, and 21, 2021, the remaining Containers were picked up from the Port of Seattle.

18. MSC assessed demurrage charges in the amount of \$114,156, which were required to be paid in order to pick up the Containers.

B. Demurrage

19. MSC repeatedly ignored CCMA's attempts to communicate regarding the demurrage fees, and when MSC was finally reached it refused to extend the last free day for the Containers and/or waive or reduce the accrued demurrage charges. On December 14, 2021, CCMA asked MSC via email to extend the last free day, but MSC failed to respond. On December 16, 2021, CCMA again asked MSC via email for an extension of the last free day. MSC again failed to respond. Also on December 16, 2021, CCMA telephoned MSC to again request an extension of the last free day. MSC stated on that telephone call that it is MSC's policy not to waive or reduce demurrage assessed under these circumstances, and MSC stated that it would refuse to waive or reduce the demurrage charges on the Containers.

20. MSC's stated policy and practice regarding the assessment of demurrage charges for containers on governmental holds is to charge full demurrage "regardless of delays caused by US Customs/inspections/holds."

21. Due to the significant delays in completing the CBP examination, which were outside of CCMA's control, CCMA was assessed and required to pay demurrage charges in the total amount of \$114,156 in connection with the Containers.

22. The demurrage charges at issue were assessed at both the base and penalty levels while the Containers at issue were unavailable due to government holds.

V. VIOLATIONS OF THE SHIPPING ACT

23. Section 41102(c) of the Shipping Act (46 U.S.C. § 41102(c)) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

24. Respondents are ocean common carriers as defined by the Shipping Act.

25. Respondents' practices and regulations relating to the assessment of demurrage are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

26. Respondents have failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against shipments, including the Containers, that are subject to a governmental hold for examination, and therefore, unavailable for pick-up.

27. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges that serve no incentivizing principle and do not promote freight fluidity.

28. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by refusing to extend free time and/or waive or reduce demurrage charges for the Containers, which were unavailable for pickup.

VI. CAUSATION AND INJURY TO COMPLAINANT

29. As a result of Respondents' violations of the Shipping Act, the Complainant has sustained injuries and damages in the amount of \$114,156.

VII. ALTERNATIVE DISPUTE RESOLUTION

30. CCMA made several unsuccessful attempts to resolve this matter with MSC prior to filing this Verified Complaint. In addition to e-mailing and telephoning MSC during the period the Containers were held, CCMA sent a formal letter to MSC on April 11, 2022 detailing the circumstances under which MSC unjustly assessed demurrage as well as MSC's refusal to engage in good faith discussions to resolve the dispute. That letter provided MSC a final opportunity to address the contested demurrage. CCMA further attempted to engage MSC in discussions regarding the demurrage charges at issue in May 2022 without success.

VIII. PLACE OF HEARING

31. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

IX. PRAYER FOR RELIEF


WHEREFORE, Complainant respectfully requests that Respondents be required to answer the charges in this Complaint, and that after the Commission's investigation and hearing, the Commission issue an order:

- 1) Requiring Respondents to pay Complainant reparations for the unlawful conduct described herein, along with interest and Complainant's attorneys' fees and costs pursuant to 46 U.S.C. 41305;
 - 2) Requiring the payment of any other amounts that the Commission deems appropriate;
- and

3) Providing such other and further relief that the Commission deems just and proper.

November 14, 2022

Respectfully submitted,



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Attorneys for CCMA, LLC

VERIFICATION

I, Brian Dempsey, am the Chief Financial Officer and Chief Risk Officer of Complainant CCMA, LLC and hereby declare and attest under penalty of perjury that I have read the forgoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: November 7, 2022:

